

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Department of Natural Resources

Rule Making Affecting Silvicultural Burn Permit Fees

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OBJECTIVES

The Department of Natural Resources (DNR) is proposing a rule change to the forest protection rule WAC 332-24-221 which would increase silvicultural burn permit fees as authorized by the 2011 State Legislature in Second Engrossed Substitute House Bill 1087.

The objective is to comply to the maximum extent possible with the statutory direction in RCW 70.94.6534 to set permit fees at a level necessary to cover the costs of the silvicultural burning program. DNR's ability to comply fully with this direction is limited to the level authorized in Second Engrossed Substitute House Bill 1087.

CONTEXT

Existing Silvicultural Burn Program

Through authority provided in Washington's forest protection laws (RCW 76.04.205) and Clean Air Act (RCW 70.94.6534), DNR is responsible for regulating burning of forest debris on forestlands where DNR provides fire protection. DNR accomplishes this through implementation of regulatory rules (WAC 332-24) and the Smoke Management Plan (SMP). The SMP was developed in collaboration with small forest landowners, large forest landowners, federal land managers, and the Department of Ecology and provides for a limited burning program that protects human health and safety from the effects of outdoor burning while allowing the use of fire under controlled conditions to maintain healthy forests and meet land management needs.

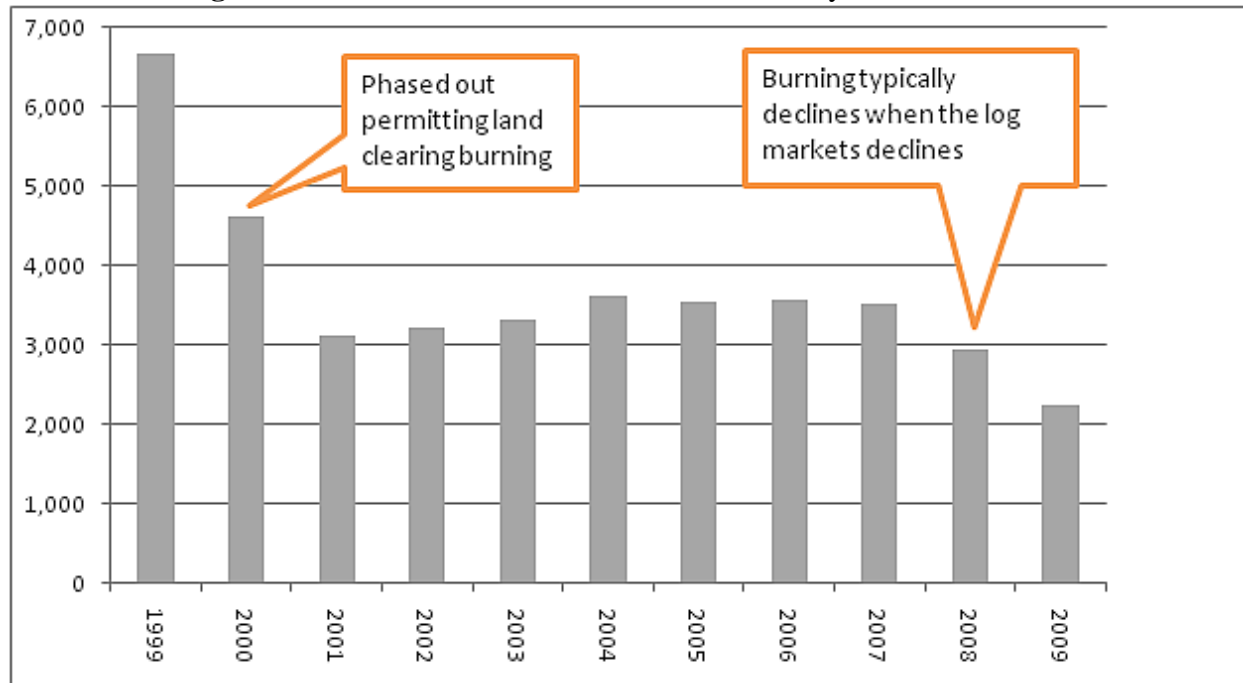
The current silvicultural burn program involves the following:

- DNR region staff to issue and comply permits following on-site review of proposed burns, providing fire prevention and safety education and permit conditioning to mitigate fire escape and nuisance smoke
- DNR smoke management staff responsible for daily approval/denial of large burns based on SMP criteria and overview of SMP implementation
- Technology (meteorological models, burn permit database, web-based telephony system) used in evaluating daily burn approvals, tracking and reporting of smoke emissions, and burner notification of fire safety and air quality burn bans
- Program administration

The number of silvicultural burn permits issued has declined since 1999 due largely to the phasing out of DNR-issued land clearing burn permits and more recently due to reduced timber

harvest as a result of declining log prices (see **Figure 1**). The number of burn permits fell to a new low in FY 2009. In FY 2010, 2,213 burn permits were issued, about the same number as in FY 2009.

Figure 1. Number of Silvicultural Burn Permits by Year, 1999-2009



Existing Silvicultural Burn Permit Fees

The state Clean Air Act directs DNR to set permit fees at a level necessary to cover the costs of the program after receiving comments from the public. Although federal land management agencies are not required to secure permits prior to silvicultural burns (federal land is not under DNR fire protection), the federal Clean Air Act requires that these agencies follow the SMP requirements related to smoke management and payment of fees.

At the time fees were first authorized in 1991, DNR and the Forest Fire Advisory Board determined that the cost of the program was approximately \$80 for a permit to burn 100 tons or less of forest debris (the minimum permit size). The decision was made to implement a sliding fee structure based on the tonnage permitted, with the minimum fee initially set at \$20 for a permit of 100 tons or less. The intent was to raise fees over time to eventually cover the full cost of the program.

This strategy was compromised in 1993, when Initiative 601 became law and limited any fee increases to a factor based on the rate of inflation and population growth. Each year from 1995 to 1999, fees were raised at the allowed rate without making significant progress toward the statutory direction to recover the full costs of the program through fees. With inflation relatively low over the last several years (and therefore the amount that fees could be increased annually also being low), DNR has not increased permit fees since 1999. Under WAC 332-24-221, the current fee for a 100 ton or less burn permit is \$25.50 and as shown in **Figure 2** for amounts over

Figure 2. Current Silvicultural Burn Permit Fee Schedule (WAC 332-24-221)		
Tons		Current Fee
0	100	\$25.50
101	500	127
501	1,000	391
1,001	1,500	651
1,501	2,000	914
2,001	2,500	1,175
2,501	3,000	1,438
3,001	3,500	1,697
3,501	4,000	1,959
4,001	4,500	2,222
4,501	5,000	2,483
5,001	5,500	2,746
5,501	6,000	3,007
6,001	6,500	3,271
6,501	7,000	3,532
7,001	7,500	3,794
7,501	8,000	4,056
8,001	8,500	4,318
8,501	9,000	4,580
9,001	9,500	4,843
9,501	10,000	5,102
>10,001		5,365 plus \$0.50/ton for tons over 10,000

100 tons. Although the schedule lists fees in 500 ton increments up to 10,000 tons, the largest permit issued to a non-federal landowner in Fiscal Year 2010 (FY 2010) was for 1,460 tons, at a fee of \$651.

Figure 3 shows burn permit fees collected in FY 2010 by landowner type. A total of \$127,891 was received under the program. Federal agencies paid \$31,064 of this total representing their share of the program's smoke management implementation under the SMP. DNR does not provide fire protection to federal lands and therefore does not issue burn permits or regulate federal burning for fire protection and safety, all of which are additional costs incurred by DNR in permitting burns on DNR protected lands. To address this, the SMP provides for cost allocation among burner groups resulting in a lower fee for federal burning when compared to burning conducted on DNR protected lands. Since federal burners are not issued permits, the following description of FY 2010 fees will summarize the permits issued to non-federal landowners.

Figure 3. Burn Permit Fees for FY 2010 by Landowner Type							
Landowner Type	# of Parties	# of Permits	Tons	Amount of Fees	Tons/ Permit	Fees/ Permit	Fees/ Ton
Industrial	33	491	94,140	\$ 49,272.50	192	\$ 100.35	\$ 0.52
Other Private	67	77	4,757	\$ 2,978.50	62	\$ 38.68	\$ 0.63
Individuals	1,372	1,393	22,872	\$ 36,739.50	16	\$ 26.37	\$ 1.61
Non-Federal Public Agency	22	125	13,976	\$ 7,836.50	112	\$ 62.69	\$ 0.56
Non-Federal Total	1,494	2,086	135,745	\$ 96,827.00	65	\$ 46.42	\$ 0.71
Federal Public Agency	8	145		\$ 31,064.10			
TOTAL	1,502	2,231		\$ 127,891.10			

Of the non-federal landowners, 1,494 different parties were issued 2,086 permits to burn 135,745 tons of forest debris and paid \$96,827 in permit fees. The “average” permit was issued for 65 tons at a fee of \$46.42 per permit or \$0.71 per ton.

Thirty-three large industrial forestland owners were issued 24 percent of the permits, accounting for 69 percent of the tonnage and 51 percent of the total fees paid. Sixty-seven other private parties (small forestry-related businesses, land holding companies, outdoor recreation organizations, etc.) were issued four percent of the permits, accounting for four percent of the tonnage and three percent of the total fees. A total of 1,372 individuals (individual persons, couples, or family trusts) were issued 67 percent of the permits, accounting for 17 percent of the tonnage and 38 percent of the total fees. Finally, 22 non-federal public agencies were issued six percent of permits, accounting for ten percent of the tonnage and eight percent of the total fees.

In FY 2010, the \$127,891 collected in burn permit fees funded approximately 18 percent of the program’s annual \$700,000 cost. To meet the direction in the state Clean Air Act to set permit fees at a level necessary to cover the costs of the program, the Legislature authorized DNR in Second Engrossed Substitute House Bill 1087 to increase current permit fees by up to \$80.00 plus \$0.50 per ton for each ton of material burned in excess of 100 tons. The increase authorized by the Legislature is anticipated to generate \$364,500 in fees, which is 87% of the \$420,000 funding level considered to be needed to deliver a minimal burn program.

PROPOSED RULE

The proposed rule change would increase burn permit fees by the Legislatively authorized amount of up to \$80.00 plus \$0.50 per ton for each ton of material burned in excess of 100 tons, as shown in **Figure 4**.

Figure 4. Proposed Revision to Burn Permit Fee Schedule (WAC 332-24-221)

<u>Tons</u>		<u>Current Fee</u>	<u>New Fee</u>
0	100	\$25.50	\$105.50
101	500	127	357
501	1,000	391	846
1,001	1,500	651	1,356
1,501	2,000	914	1,869
2,001	2,500	1,175	2,380
2,501	3,000	1,438	2,893
3,001	3,500	1,697	3,402
3,501	4,000	1,959	3,914
4,001	4,500	2,222	4,427
4,501	5,000	2,483	4,938
5,001	5,500	2,746	5,451
5,501	6,000	3,007	5,962
6,001	6,500	3,271	6,476
6,501	7,000	3,532	6,987
7,001	7,500	3,794	7,499
7,501	8,000	4,056	8,011
8,001	8,500	4,318	8,523
8,501	9,000	4,580	9,035
9,001	9,500	4,843	9,548
9,501	10,000	5,102	10,057
>10,001		5,365	10,395 plus \$0.50/ton for tons over 10,000

SMALL BUSINESS IMPACTS

A small business economic impact statement is required by the Regulatory Fairness Act (Chapter 19.85 RCW) to consider the impacts on small businesses of administrative rules adopted by state agencies. The statute defines small businesses as those with 50 or fewer employees. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement compares the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

In this analysis, it is assumed that the number of permits to be issued annually in the future will be the same as the number issued in FY 2010 (2,086 to non-Federal parties and 1,961 to private parties) and therefore the FY 2010 data will be used as representative of future years. On one hand, the number of burn permits should increase when cyclical timber markets recover and the volume of timber harvest increases. On the other hand, it is expected that increased utilization of forest debris for biomass will limit increases in numbers of burn permits issued when log markets improve. Also the higher burn permit fees will likely act to reduce the number of permits requested.

Small Business Analysis

Burning permits issued to 1,372 individual landowners account for 92 percent of all permits issued. Some of these individual landowners are appropriately considered to be “businesses” as they are managing and harvesting timber on their property for income producing purposes and need burning permits as part of their timber harvest activity. However, most individuals obtaining burn permits are not “businesses” in the normal sense in that their properties are not being managed for income producing purposes but rather their need to burn silvicultural debris is incidental to their non-economic use and enjoyment of their properties, such as thinning and removal of forest understory to mitigate wildfire threat to existing structures.

Because of the ambiguity of treating individual landowners as “businesses” to meet the intent of the small business economic impact statement, the required analysis will be done both including and excluding the 1,372 individual landowners. Both analyses will exclude all public agencies since they are not private businesses. The 100 private organizations which include industrial forest landowners, smaller forestry-related businesses, land holding companies, outdoor recreation organizations, etc., are included in both analyses as businesses.

The Regulatory Fairness Act at RCW 19.85.040 states that one or more of the following measures are to be used as a basis for comparing costs:

- (a) cost per employee;
- (b) cost per hour of labor; or
- (c) cost per one hundred dollars of sales.

Cost per employee is used for the analysis below since there is no applicable data available for the other two measures.

Figure 5 shows the small business impact analysis including all 1,472 private burn permittees as businesses. The “ten percent of businesses that are the largest business required to comply with the proposed rule” is comprised of all 100 private firms and organizations plus 47 individuals. These 147 permittees (ten percent of 1,472) have an average of 31.7 employees. This is based on the 100 firms and organizations having an average of 46.0 employees each (derived from available employment data for 39 of these 100 parties) and 47 individuals having an average of 1.5 employees each (see below).

Figure 5. Comparison of Impact to Small Businesses Versus Largest 10% of Businesses Including Individuals									
Group of Permittees	# of Permittees	# of Permits	Current Fees	Proposed Fees	Fee Increase	Fee Increase per Party	# of Employees	Average # of Employees	Fee Increase per # of Employees
10% Largest	147	636	\$ 55,203	\$ 156,708	\$ 101,505	\$ 691	4,667	31.7	\$ 21.75
90% Smallest	1,325	1,325	\$ 33,788	\$ 139,788	\$ 106,000	\$ 80	1,988	1.5	\$ 53.33
	1,472	1,961	\$ 88,991	\$ 296,496	\$ 207,505	\$ 141	6,655	4.5	\$ 31.18

The individual permittees are considered to be households of individuals or couples (or family trusts) with an average of 1.5 persons each. The average fee increase per employee for the small businesses outside the largest ten percent (all 1,325 are “small businesses” since they all have under 50 employees) is \$53.33 as compared with \$21.75 for the ten percent of businesses that are the largest businesses. Therefore, this analysis determines that the proposed rule will have a disproportionate cost impact on small businesses.

Figure 6 shows the results of the small business impact analysis excluding the 1,372 individual permittees. The comparison is based on the 39 out of 100 firms and organizations for which there is employment data available. It is assumed that the 39 fairly represents the 100. Four parties (ten percent of 39) represent the ten percent of businesses that are the largest businesses and they have an average fee increase per employee of \$2.41 (or \$1.32 under the multiple-unit permit scenario¹). Four additional parties have over 50 employees each and are therefore not

Figure 6. Comparison of Impact to Small Businesses Versus Largest 10% of Businesses For Business with Employment Data Available, Excluding Individuals							
Group	# of Businesses	Average # of Employees	Average # of Permits	Average Current Fees	Average Proposed Fees	Average Fee Increase	Fee Increase per # of Employees
Top 10%	4	231	7	\$ 191	\$ 749	\$ 558	\$ 2.41
Over 50 Employees/Not In Top 10%	4	100	31	\$ 2,791	\$ 7,997	\$ 5,206	\$ 52.06
Under 50 Employees	31	15	7	\$ 573	\$ 1,653	\$ 1,080	\$ 71.53
Total	39	46	9	\$ 762	\$ 2,211	\$ 1,449	\$ 31.53

¹ Under the current burn permit program, DNR requires one permit for each burn unit (site or location). Some parties, especially large industrial forest landowners, have many burn units each year and therefore needed to acquire several permits each year. As the proposal to increase the fee schedule was working its way through the legislative process, DNR agreed with large industrial forest landowners to implement a new multi-unit permit under which all proposed burn units within a DNR region during the year could be placed under one permit.

considered to be small businesses for this analysis. The remaining 31 parties which have less than 50 employees each represent the small businesses in this analysis and they have an average fee increase per employee of \$71.53 (or \$42.98 under the multiple-unit permit scenario). Therefore, this analysis also determines that the proposed rule will have a disproportionate cost impact on small businesses.

Reducing Costs for Small Businesses

RCWs 19.85.030 and .040 address an agency's responsibility in rule making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. The statute states that "if the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency shall provide a clear explanation of why it has made that determination".

The only way to significantly reduce the disproportionate cost impact on small businesses would be to lower the fee increase on the permits with the least tonnage (up to 100 tons) significantly below the \$80 increment proposed in the rule change and authorized by the Legislature. For illustrative purposes, if in an attempt to avoid the disproportionate cost impact on small businesses the least tonnage permit fee was raised from \$25.50 to only \$45.50 instead of to the proposed \$105.50 and all the larger tonnage permits remained at the proposed fee levels, approximately \$100,000 less in fees would be collected. Absent additional funding from another source, DNR would need to develop a process to prioritize permit requests, resulting in the reduced availability of burning as a management tool to address fire hazard abatement, silvicultural, and forest health needs. If a permit prioritization process was instituted, some landowners would not be able to obtain a permit when needed and would incur increased costs to use alternative methods in meeting land management goals. These may include hauling away the material, leaving it lie in place, or piling it up on the property. Another factor justifying the disproportionate cost impact on small business is simply the fact that DNR's cost to process and administer a permit is roughly the same regardless the amount of tonnage covered by the permit.

Estimated Number of Jobs Created or Lost

RCW 19.85.040 (2)(d) requires that the small business economic impact statement include "an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

As shown in **Figure 5**, the total fee increase on private parties is \$207,505 but it is spread across 1,472 different parties. Because of the relatively low absolute magnitude of the amount of fee increases on any single party, it is very improbable that any jobs would be lost directly. Those parties faced with the proposed \$80 increase on the smallest tonnage permits will simply absorb the cost or elect not to get a permit to burn. Ten large industrial forest landowners would incur total fee increases over \$1,000 each under the proposed rule, but for eight of those the cost is less than \$100 per employee (and it is \$271 and \$810 per employee for the other two firms).

Therefore, it is reasonable to conclude that no jobs will be lost as a result of compliance with the proposed rule.²

² If the \$207,505 total fee increase was incurred by one or only a few forestry and logging firms (rather than being spread across 1,472 parties) and that firm or those few firms reduced their total output by the total amount of \$207,505, then approximately 3.6 jobs would be lost in the state based on the 17.30 total jobs per \$1 million final demand multiplier for the forestry and logging sector as specified in the 2002 Washington Input-Output Model.